

State of New Hampshire



PERSONNEL APPEALS BOARD
54 Regional Drive, Unit 5
Concord, New Hampshire 03301

STATE OF NEW HAMPSHIRE PERSONNEL APPEALS BOARD

APPEAL OF JAMES GOSSELIN

DOCKET # 2020-T-006

APPEARANCES: Attorney Gary Snyder of the State Employees Association represented the Appellant, James Gosselin.

Attorney Eric Bal of the New Hampshire Attorney General's Office represented the State.

ISSUES OF LAW: Per 1002.08(a) (08) – Threatening another employee or individual served by the agency.

Per. 1002.04(b)(19) – Disruptive, disorderly or disrespectful conduct in the workplace, including the use of insulting or abusive language or gestures.

WITNESSES: Becky Peoples – Department of Information Technology, ITM III

Gene Marchese – Investigator, Department of Personnel

Ron Reed, Department of Information Technology, ITM V

James Gosselin, Appellant, Department of Information Technology, ITM III

APPEAL HEARING: The Board conducted an in-person appeal hearing at the offices of the NH Division of Personnel in Concord, N.H. September 23, 2020.

APPEAL TRIBUNAL: A quorum of the Board sat on this appeal: Commissioner Gail Wilson, Attorney Jason Major, and Attorney Norman Patenaude who served as presiding officer.

BACKGROUND

The State dismissed the Appellant pursuant to Per 1002.08 (a)(08) for threatening his coworker, Becky Peoples, during one-on-one meetings between Ms. Peoples and the Appellant while she was attempting to learn and assume some of the appellant's responsibilities as DOIT Information Technology Manager assigned to the Department of Safety. The Appellant disputes the propriety of his termination and appealed to this Board requesting that the November, 2019, decision of the Commissioner of the Department of Information Technology ending the Appellant's employment be overturned.

FINDINGS OF FACT

The facts are drawn from the record, the pleadings, and the testimony of witnesses. The Appellant, James Gosselin was employed by the N.H. Department of Information Technology ("DOIT") for about five years, prior to his termination on November 7, 2019. He most recently held a position as an Information Technology Manager ("ITM") III, assigned to the Department of Safety ("DOS"). His immediate supervisor was Ron Reed, an ITM V assigned as the "Lead" for DOIT operations at the DOS.

Becky Peoples was hired by the DOIT on August 30, 2019, and assigned to work as an ITM III under Mr. Reed at the DOS. The Appellant was to be one of her coworkers. During the first few weeks of her employment, Ms. Peoples visited with her DOIT coworkers assigned to the DOS, and attended information-gathering meetings to bring her up to speed on the DOIT operations within DOS. On September 9, 2019, Ms. Peoples had an information-gathering meeting with the Appellant. The purpose of the meeting was, in part, to learn about certain operations that Mr. Reed was reassigning from Mr. Gosselin to Ms. Peoples.

Ms. Peoples testified at the hearing, consistent with emails and statements she provided during the investigation which followed, that this September 9, 2019 meeting immediately got off to a bad start. According to Ms. Peoples, Mr. Gosselin was loud and hostile, initially asking her rudely "Okay, what do you want?" before asking if Mr. Reed had asked her to "get information from him." Mr. Gosselin appeared upset that he had to provide any information to Ms. Peoples.

When Ms. Peoples asked the Appellant for information about the vendors supporting DOIT equipment at the DOS, Mr. Gosselin avoided providing her with information, claiming he could not do so for "security reasons." He eventually told Ms. Peoples that the vendor information was in a filing cabinet and dismissively said, "Good luck" in relation to her need to find vendor information. At some point during the conversation, Mr. Gosselin volunteered that he was "the root of all evil" and intimated that if Ms. Peoples contacted any vendor, "he would know about it." These comments, and the tone with which they were delivered, made Ms. Peoples uncomfortable, and she decided not to ask any further questions during that meeting. She did,

however, mention the encounter to Ron Reed. Mr. Reed's response was to suggest setting up weekly transition meetings between Ms. Peoples and Mr. Gosselin, which Mr. Reed would attend and supervise.

Mr. Gosselin denied any hostility on his part during the September 9, 2019 meeting with Ms. Peoples. He claimed that he was merely "in teaching mode," and that his skepticism about providing Ms. Peoples with vendor info was due to the lack of good vendor-related record-keeping prior to his time with DOIT. He claimed that his explanations surrounding this were delivered in a "matter of fact" fashion, and that he was not rude or abrasive. He admitted during the hearing that he may have commented that if she contacted a vendor "he would know," but attempted to give this an innocent explanation by suggesting he meant only that he would be contacted by a vendor because he was already an authorized point of contact for DOIT, and Ms. Peoples was not. Notably, he denied making any such comment in his official statement to the DOIT investigator (Page 5 of Hearing Exhibit 1).

Mr. Gosselin also denied, or at least did not clearly admit, saying he was "the root of all evil" in his official written statement, executed by him in the course of the subsequent Department of Personnel investigation of these incidents. At the hearing, however, Mr. Gosselin admitted making the "root of all evil" statement, but claimed that Ms. Peoples laughed at this comment, and understood it to be a reference to his taking on responsibilities outside his assigned scope at the DOS, and then being blamed for problems related to those additional self-assumed duties. The Appellant asserted that he uses such "funny euphemisms" regularly, and that no ill-will was intended by it. He described this part of his conversation with Ms. Peoples as being "light-hearted" and that Ms. Peoples did not show any distress during their meeting.

The first transition meeting between Mr. Gosselin, Ms. Peoples, and Mr. Reed happened on September 19, 2019. Ms. Peoples felt this meeting went well, and with Mr. Reed present, the tension she felt during her previous one-on-one meeting with Mr. Gosselin was not present. A second meeting with Mr. Reed present was held on September 26, 2019. Mr. Reed had to leave this meeting early to attend to other responsibilities, leaving Ms. Peoples alone with Mr. Gosselin again. She claimed that Mr. Gosselin immediately went on the offensive in Mr. Reed's absence, standing up and demanding to know "exactly what [she] wanted." She described the change in his demeanor as being like "night and day" and that he was defensive and controlling. He told her "Ron is always up my ass and now you are too. That's exactly why the last guy in your position lost his job." When she became alarmed and began to pack up her papers, Mr. Gosselin back-pedaled, began to talk in circles, and then told her that he did not want her to leave the meeting "on a bad note."

The Appellant's description of the meeting was very different. He denied making any of the hostile comments alleged by Ms. Peoples, and claimed that both he and Ms. Peoples left the meeting room almost immediately after Mr. Reed did. He claimed that there should have been electronic access card data and surveillance video to corroborate his assertions on this point.

Notably, however, he never requested the card swipe data in discovery for this Appeal, and dropped a pending request for the surveillance video evidence during the discovery process.

Mr. Reed testified that after the September 26, 2019 meeting, he saw Ms. Peoples in the hallway, and asked her how the meeting with Mr. Gosselin went after Mr. Reed left the room. She reacted by stiffening up, looking alarmed, and made a comment to the effect that she was "still trying to process this," and that she would follow-up with him later. Ms. Peoples did so, describing the meeting to Mr. Reed the next day. He requested that she put a description of the meeting in writing, which she did via email on October 1, 2019 (Page 14 of Hearing Exhibit 2).

Ms. Peoples' written email complaint led to the initiation of an investigation into Mr. Gosselin's behavior toward her, conducted by Gene Marchese of the N.H. Department of Personnel. Mr. Marchese's in-person testimony and investigative report were consistent in determining that Ms. Peoples seemed credible in her description of events, and genuinely upset and alarmed by Mr. Gosselin's demeanor toward her. Mr. Marchese's descriptions of Mr. Gosselin were also consistent in finding him abrupt, evasive, and inconsistent. Mr. Marchese concluded that Mr. Gosselin was not credible in his explanations of what had occurred between him and Ms. Peoples.

Mr. Reed testified that he found Ms. Peoples' descriptions of events to be honest and credible, and that she seemed genuinely upset and shaken by her encounters with Mr. Gosselin. He also noted that the Appellant had a known history of having poor communications skills and an evasive, less-than-honest approach when working with others. Mr. Reed testified he was not surprised to learn that Mr. Gosselin was causing Ms. Peoples grief when she came to him with her concerns.

The Appellant intimated during the course of the hearing that his termination was retaliatory, because he had engaged in "whistle-blowing activity" earlier in 2019, which upset his new supervisor, Mr. Reed. Mr. Gosselin's "whistleblower" complaints were investigated and determined to be unfounded in July, 2019 (Hearing Exhibit 3, pages 29-38). It was apparent from the testimony, body language and demeanor of Mr. Reed and Mr. Gosselin at the September 23, 2020 hearing, that there was no love lost between Mr. Reed and the Appellant. Mr. Reed considered Mr. Gosselin to be a poor employee, with documented poor communications skills and an unwillingness to be accountable for his performance. Mr. Gosselin believes Mr. Reed is a bad manager who is was looking for an excuse to terminate his employment in the wake of his unfounded "whistleblower" complaint.

Mr. Marchese concluded his investigation with a report dated November 4, 2019 (Hearing Exhibit 1). Mr. Marchese determined that Ms. Peoples' account of the interactions was more credible than Mr. Gosselin's, and that she was made genuinely upset and uncomfortable by Mr. Gosselin's behavior. He found that Mr. Gosselin was evasive and uncooperative, and that the Appellant had engaged in inappropriate behavior toward Ms. Peoples in violation of Per.

1002.04(b)(19) (Disruptive, disorderly or disrespectful conduct in the workplace, including the use of insulting or abusive language or gestures) and Per. 1002.08(b)(8) (Threatening another employee or individual served by the agency). Based on the conclusions reached by investigator Marchese, DOIT Commissioner Denis Goulet issued a Notice of Dismissal to Mr. Gosselin, dated November 7, 2019 citing Per. 1002.08(b)(8) as the legal basis justifying Mr. Gosselin's termination from State service.

CONCLUSIONS OF LAW

Following the in-person hearing conducted on September 23, 2020, the Board met to review and consider the testimony and documentary evidence presented by the parties.

The Board concluded that Mr. Gosselin's explanations of his behavior were inconsistent with statements he agreed to in his official investigation statement, and somewhat self-servingly "convenient." It was noteworthy that while he claimed there was physical evidence that would help to exonerate him, he did not make any dedicated efforts to obtain it. His demeanor while testifying gave credence to other witnesses' descriptions of him as being evasive, brusque, and having an inflated opinion of himself in the face of others' efforts to hold him accountable for poor behavior and/or performance on his part.

The Board found that Mr. Reed and Mr. Marchese were both generally credible, but that both had a palpable dislike for Mr. Gosselin, apparently based on Mr. Gosselin's established reputation for being an employee who had accountability issues and who was difficult to get along with.

Ms. Peoples was also considered generally credible by the Board, and the Board Members unanimously found that her descriptions of the interactions she had with Mr. Gosselin were more than likely closer to the truth than the Appellant's efforts to unravel them with innocent explanations for his rude and confrontational behavior.

With all of this taken into account, the Board nevertheless determined that termination was an excessive disciplinary step in this case. While Mr. Gosselin is apparently a difficult employee from a personality and personal accountability perspective (and with an established reputation as such), he has no prior formal discipline in his personnel file. It was apparent to the Board that the decision to terminate Mr. Gosselin's employment with the State was based in significant part on the subjective impact it had on Ms. Peoples, as opposed to the objective level of impropriety. While the Board in no way condones his behavior, the only "threat" that Mr. Gosselin made was a careless statement implying that he played some role in getting another employee fired prior to Ms. Peoples' joining DOIT. It is doubtful that Mr. Gosselin had any real power or influence to carry out such a threat, or that Ms. Peoples had any objective reason to believe that he did. The other interactions described by Ms. Peoples, while rude and no doubt upsetting, were not viewed as "threatening" by the Board.


The Board found that Mr. Gosselin's behavior, viewed objectively, would align more closely with that described in Per. 1002.04(b)(9), as "[d]isruptive, disorderly or disrespectful conduct in the workplace." Given that this incident appears to be the first formal discipline meted out to Mr. Gosselin, a Letter of Warning pursuant to Per. 1002.04(a) and 1002.04(b)(9) would be a more appropriate sanction for his conduct toward Ms. Peoples. In reaching this decision, the Board notes that a Letter of Warning may be appropriate for first instances of "threatening" behavior toward coworkers, even including "*physically* or verbally abusive or threatening" conduct, pursuant to Per. 1002.04(b)(10). In this case, there was no evidence that Mr. Gosselin actually physically threatened Ms. Peoples, even if she may have subjectively believed that he was an angry person who was capable of physical violence.

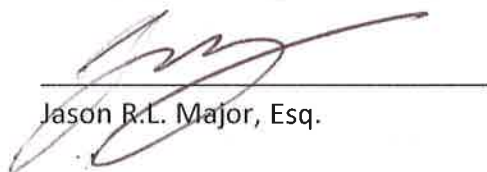
DECISION

Based on the evidence of record, the Board grants the Appellant's appeal and overturns the State's dismissal. A Letter of Warning shall be issued to the Appellant for his violation of Per 1002.04(b)(9).

This is a unanimous decision.


Commissioner Gail Wilson


Norman J. Patenaude, Esq.


Jason R.L. Major, Esq.

Dated: November 6, 2020